



November 20, 2012

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, D.C. 20554

Re: *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96- 45; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208; *IP-Enabled Services*, WC Docket No. 04-36, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-23; *Framework for Broadband Internet Service*, GN Docket No. 10-127; *Petition for Declaratory Ruling That tw telecom inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom’s Facilities-Based VoIP Services and IP-in-the-Middle Voice Services*, WC Docket No. 11-119; *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Requirements*, WC Docket No. 12-61; *Cbeyond, Inc. Petition for Expedited Rulemaking to Require Unbundling of Hybrid, FTTH, and FTTC Loops Pursuant to 47 U.S.C. § 251(c)(3) of the Act*, WC Docket No. 09-223; *Petition for Expedited Rulemaking to Adopt Rules Pertaining to the Provision by Regional Bell Operating Companies of Certain Network Elements Pursuant to 47 U.S.C. § 271(c)(2)(B) of the Act*, WC Docket No. 09-222; *Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers, BridgeCom International, et al., Petition for Rulemaking and Clarification (filed Jan. 18, 2007) (“BridgeCom Petition”); Petition of XO Communications, LLC, et al., For a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops*, RM-11358

Dear Ms. Dortch:

On August 30, 2012, AT&T submitted an *ex parte* letter to the Federal Communications Commission (“FCC” or “Commission”), which includes its proposal for “Commission Actions to Facilitate Retirement of Legacy TDM-Based Services/Networks and the Transition to an IP-based Network/Ecosystem” (“AT&T Proposal”).¹ AT&T’s letter followed up on its August 28th meeting with FCC Staff.² In that letter, AT&T proposes a “checklist” of actions it contends the FCC should take “without delay” to make the transition “to an IP-based Network/Ecosystem.”³

AT&T’s proposal, if adopted, would harm consumers and, indeed the entire telecommunications ecosystem, in order to support AT&T’s self-focused business model. It is not clear how seriously the Commission is considering AT&T’s ill-conceived “checklist.” With this *ex parte* filing, the National Association of State Utility Consumer

¹ Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Universal Service Reform – Mobility Fund, WT Docket No. 10-208; IP-Enabled Services, WC Docket No. 04-36, Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02-23; Framework for Broadband Internet Service, GN Docket No. 10-127; Petition for Declaratory Ruling That tw telecom inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom’s Facilities-Based VoIP Services and IP-in-the-Middle Voice Services, WC Docket No. 11-119; Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Requirements, WC Docket No. 12-61; Cbeyond, Inc. Petition for Expedited Rulemaking to Require Unbundling of Hybrid, FTTH, and FTTC Loops Pursuant to 47 U.S.C. § 251(c)(3) of the Act, WC Docket No. 09-223; Petition for Expedited Rulemaking to Adopt Rules Pertaining to the Provision by Regional Bell Operating Companies of Certain Network Elements Pursuant to 47 U.S.C. § 271(c)(2)(B) of the Act, WC Docket No. 09-222; Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers, BridgeCom International, et al., Petition for Rulemaking and Clarification (filed Jan. 18, 2007) (“BridgeCom Petition”); Petition of XO Communications, LLC, et al., For a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops, RM-11358, Letter dated August 30, 2012 from Robert W. Quinn, Jr. Senior Vice President Federal Regulatory and Chief Privacy Officer to Marlene H. Dortch, Secretary, Federal Communications Commission (“Letter”). A three-page attachment, entitled “Commission Actions to Facilitate Retirement of Legacy TDM-Based Services/Networks and the Transition to an IP-based Network/Ecosystem” (“Attachment”) is included with the letter.

² On November 2, 2012, AT&T submitted a Petition to Launch a Proceeding Concerning the TDM-to-IP Transition. In this filing, NASUCA does not address the deficiencies of AT&T’s Petition, but will do separately if the FCC opens a proceeding to address AT&T’s Petition.

³ Letter, at 1-2.

Advocates (“NASUCA”)⁴ and the New Jersey Division of Rate Counsel⁵ respond to AT&T’s ill-conceived proposal.

In the “Connect America Fund Order,” in which the Commission reformed intercarrier compensation systems and high cost support and also set forth a blueprint for broadband support, the Commission specifically rejected industry requests to preempt state-mandated voice service obligations.⁶ The industry, though, in filings such as AT&T’s recent *ex parte* filing, is continuing to push back on this issue in a transparent effort to get out from beneath state-mandated obligations to offer voice service.

AT&T is, of course, not alone in this focus on self-centered business models. Lowell McAdam, Verizon Communications Inc. (“Verizon”) Chairman & CEO, in an investor presentation in June 2012,⁷ referred to Verizon’s interest in abandoning the copper network and moving customers to the (more profitable) wireless network, and to FiOS. Among other things, McAdam stated:

⁴ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

⁵ Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel, formerly known as the New Jersey Ratepayer Advocate, is in, but not of, the New Jersey Department of Treasury. *N.J.S.A. §§ 52:27EE-46 et seq.*

⁶ In the Matter of Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; Universal Service Reform – Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking (“CAF Order”) at para. 82. The FCC found that the supporters of preemption had failed to show either that any specific obligations were unfunded mandates that would harm broadband deployment or that the obligations were inconsistent with federal rules. *Id.*

⁷ Thomson Reuters StreetEvents , VZ – Verizon at Guggenheim Securities Symposium, June 21, 2012.

But the vision that I have is we are going into the copper plant areas and every place we have FiOS, **we are going to kill the copper**. We are going to just take it out of service and we are going to move those services onto FiOS. We have got parallel networks in way too many places now, so that is a pot of gold in my view. And then in other areas that are more rural and more sparsely populated, we have got LTE built that will handle all of those services and so we are going to cut the copper off there. We are going to do it over wireless. So I am going to be really shrinking the amount of copper we have out there and then I can focus the investment on that to improve the performance of it. So there is lots of opportunities there and FiOS is continuing to do very well so we can grow the top line through FiOS and we can leverage the cost efficiencies on the network side. **So margins can improve.**⁸
(Emphasis added)

A variation of this issue surfaced recently in Pennsylvania, where Verizon has decided to offer some rural communities 4G LTE as a way for the communities to obtain a broadband “ramp” to the Internet rather than copper-based digital subscriber line service (“DSL”).⁹ The problem with wireless is that it is metered and so far more costly for consumers than the copper-based DSL option.

AT&T and Verizon also refused the initial round of the FCC’s “Connect America Funds.” Consistent with AT&T’s August 30, 2012 proposal, by avoiding reliance on universal service support, they will surely argue that they should be allowed to walk away from their copper networks and from their obligation to offer basic voice service. Among the key elements of AT&T’s August 30, 2012 proposal are the following:¹⁰

1. Establish a sunset date for TDM-services (i.e., the copper network).
2. Classify IP-enabled services as information services.
3. Reform and streamline (or forbear from) section 214 service/discontinuance procedures and network modification rules.

⁸ Id., at 8. It should also be noted that Verizon has chosen **not** to grow its FiOS network beyond its current deployment. See, e.g., Roger Cheng, “Verizon to End Rollout of FiOS,” *The Wall Street Journal*, March 30, 2010.

⁹ David K. Ebersole, Jr., and Office of Consumer Advocate, Petitioners, v. Verizon Pennsylvania, Inc., Respondent, Pennsylvania Public Utility Commission Docket No. P-2012-2323362.

¹⁰ Attachment, at 1-2.

4. Declare that existing eligible telecommunications carrier (“ETC”) designations will terminate on a date certain and then limit ETC status and obligations to those carriers that voluntarily accept such status and only to those services and geographic areas that receive federal universal service broadband support. Also, preempt states on “inconsistent state policies/rules” such as carrier of last resort (“COLR”) requirements.
5. Eliminate requirement to provide interconnection in TDM.
6. Reform the section 251/271 wholesale unbundling, resale, collocation and other requirements.

AT&T also identifies six additional steps relating to its proposal for transitioning to an IP network including (1) eliminating “regulatory underbrush”; (2) reforming the universal service fund (“USF”) further; (3) establishing rules to “facilitate migration of customers from legacy to IP-based services”; (4) reforming numbering to allow Voice over Internet Protocol (“VoIP”) providers to obtain numbering resources¹¹; (5) establishing a next generation 911 for an all-IP platform; and (6) a catch-all step: “determine other actions necessary, but not yet identified, to enable/facilitate the transition.”¹²

AT&T has failed to demonstrate the urgency of migrating to an all-IP network and has also failed to identify, let alone address, the harms to consumers and to competition that would ensue if the FCC were to adopt AT&T’s proposal. Furthermore, AT&T’s proposal inappropriately and without legal basis preempts states’ oversight of COLR obligations, and would do an end run around state public utility commissions’ oversight of when and where incumbent local exchange carriers (“ILECs”) can be relieved of the obligation to provide basic service.

By re-categorizing all services as “information” services, the FCC would eliminate (or at least severely undermine) the ability of federal and state regulators to

¹¹ For a discussion of the errors in this view, see the October 31, 2012 *ex parte* from Bandwidth.com, *et al.* in CC Docket 99-200, *et al.*

¹² Attachment, at 2-3.

adopt and enforce consumer protection measures. Furthermore, by eliminating the network unbundling obligations set forth in the Telecommunications Act of 1996, AT&T's proposal would jeopardize the survival of the few non-cable competitors that are present in the business market.

AT&T's proposal is based on the erroneous premise that TDM-based services are provided over an entirely different "network" from IP-services. AT&T's premise that TDM services are offered over a different "network" from IP services is not true. A large portion of the existing transmission infrastructure is usable and used for either type of service. AT&T and other ILECs want the FCC (and states) to pretend that "legacy" investments do not exist and to forget about the benefits that ratepayer funding conferred on ILECs during their long period of franchise exclusivity. Even when the ILEC has upgraded transmission lines (e.g., from copper to fiber), it has done so leveraging its advantages of incumbency (rights of way, etc.) and ratepayer-funded infrastructure (poles, conduits, etc.). AT&T has failed to demonstrate or explain the drawbacks of allowing the nation's "hybrid" TDM-IP network to continue to evolve, instead of abandoning the TDM network (as it and Verizon propose).

The apparent objective of AT&T's proposal is to put an end, once and for all, to the concept of basic transmission as telecommunications and, instead, to turn all traffic into deregulated information services. Under AT&T's proposal, not just Internet access but all IP-enabled services would escape common carrier regulation. With this fundamental change, the FCC would be powerless to perform most of its fundamental duties under the Communications Act. Moreover, reclassification would also have broad negative impacts on state regulators' ability to protect consumers from market failures such as service outages, service quality deterioration, anticompetitive conduct, slamming, cramming, and supracompetitive pricing.

AT&T proposes that the FCC “[r]eform and streamline (or outright forbear from)” section 214 requirements regarding discontinuance of service. Section 214 provides for prior authorization to build/operate and to discontinue/reduce/impair service:

- Section 214 requires authorization (certificate of public convenience and necessity) to construct a new line or an extension of any line; to acquire or operate any line (or extension thereof); or to engage in transmission over or by means of such additional or extended line.
- Conversely, Section 214 states that “[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.”

If AT&T and other ILECs can unilaterally abandon service on any segment of their networks without prior consideration of whether there are adverse impacts on either the present or the future public convenience and necessity, they can selectively abandon service to customers who do not meet their short-term revenue objectives, without any consideration of the disruption this may cause (to customers, to interconnected competitors, etc.), in violation of state and federal policy.

Under AT&T’s proposal, ETC status is voluntary and is only for the purpose of awarding the carrier USF support in specific areas. No state could override this decision by imposing inconsistent COLR obligations. ETC status and obligations are also covered in Section 214 (through amendments adopted under the Telecommunications Act of 1996). Section 214(e)(4) already makes provision for a provider to relinquish ETC status if there is another provider serving the affected area. [“A State commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier.”] Importantly, unlike AT&T’s proposal, Section 214’s ETC provisions expressly provide

an important role for the states in ensuring the availability of service to all customers. The FCC should reject any proposals that would eliminate that important role of states.¹³

As discussed earlier, AT&T and other ILECs have obtained unique advantages from their long-term incumbency that carry over into the so-called competitive era, and they should not now be given a *carte blanche* option to walk away from portions of their existing service territory. As noted above, the distinctions AT&T is seeking to make between TDM- and IP-based services are artificial. The technology that carriers use should not determine how the FCC and state PUCs address the ongoing issues of universal service and COLR. If the real concern is that COLR not result in ILECs being required to maintain inefficient duplication in their switching systems (TDM vs. IP), then that specific issue should be addressed. AT&T significantly overreaches in its proposed solution (AT&T seeks to deregulate IP, and then to eliminate COLR as a vestige of TDM). This is using a sledgehammer rather than a scalpel to fix the problem.

AT&T wants to jettison interconnection and wholesale obligations under Sections 251, 252, and 271 of Telecommunications Act of 1996, suggesting that these are TDM-network artifacts. The interconnection “reform” recommended by AT&T would put an end to any facilities-based competition that arose as a result of the FCC’s access policies and Sections 251/252 of the Telecommunications Act of 1996. There is precious little of this competition left in the mass market, but this change would be a death blow to competitive local exchange carriers (“CLEC”) that serve small-to-medium business customers. Experience (as far back as the 1970s and 80s) shows that, in the absence of

¹³ Industry has been actively lobbying state legislatures with proposed legislation that would eliminate COLR obligations. COLR is an issue best addressed by state public utility commissions because they possess long-standing administrative expertise regarding the telecommunications industry. In any event, however, the issue should remain at the state level, even if it is addressed by state legislatures.

regulatory protections for interconnection, ILECs have the incentive and opportunity to discriminate against competitors.

These same concerns apply to AT&T's proposal that the FCC turn its back on the comprehensive wholesale obligations under sections 251 and 271.

AT&T's proposal is premature, anticompetitive and inappropriately removes states from essential oversight and enforcement responsibilities.

CONCLUSION

NASUCA and Rate Counsel oppose AT&T's proposal and, instead, offers a different affirmative proposal. Specifically, the FCC should:

- Classify broadband Internet access as a telecommunications service;
- Classify IP-enabled services as telecommunications services;
- Refrain from preempting states' oversight of COLR obligations;
- Ensure that important consumer safeguards are not diminished as the industry makes the transition to a wireless and IP-network: changes in technology should not lead to the erosion of consumer protection. Hurricane Sandy, for example, provides ample evidence of the need for regulatory oversight of the wireless industry's and the broader telecommunications industry's (including VoIP providers) preparation for and response to emergencies, which could not occur under AT&T's framework;
- Monitor the potentially anticompetitive behavior of the telecommunications/cable industry (particularly in light of the cable-telco cross-marketing agreements); and
- Monitor the pricing behavior of the wireless industry, which, contrary to industry assertions, lacks effective competition.

Respectfully submitted,

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